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BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Sections 3(n)  
and 332 of the Communications Act

Regulatory Treatment of Mobile  
Services

GEN Docket No. 93-252

To: The Commission

**COMMENTS OF ARCH COMMUNICATIONS GROUP, INC.**

**ARCH COMMUNICATIONS GROUP, INC.**

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## **SUMMARY**

Arch Communications Group, Inc. ("Arch") hereby responds to the Notice of Proposed Rule Making (the "Notice") in the Commission's proceeding to adopt rules regarding the regulatory treatment of commercial mobile services. Arch supports the Commission's proposal to approach in a consolidated fashion the question of the regulatory status of both new personal communications services and other established services. This approach will lead to a more prompt resolution of other important proceedings that presently are pending, thereby serving the interests of the industry and the public.

The answers Arch suggests to several questions posed in the Notice are based upon Arch's strong belief that service definitions should not be based upon artificial distinctions and technical differences that history has shown will change or become obsolete over time. For the same reason, Arch concludes that store-and-forward paging should be defined as interconnected service and regulated as a commercial mobile service. Arch also concludes that many other existing mobile services should be defined as commercial mobile services. Finally, Arch believes that the Commission should subject commercial mobile services to a minimum of Title II regulation.

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**COMMENTS OF ARCH COMMUNICATIONS GROUP, INC.**

Arch Communications Group, Inc. ("Arch"), on its own behalf and on behalf of its affiliated licensee companies<sup>1/</sup>, hereby comments on the Notice of Proposed Rulemaking (the "Notice")<sup>2/</sup> in the above-captioned proceeding. The following is respectfully shown:

<sup>1/</sup> The affiliates of Arch are Arch Capital District, Inc.; Arch Southeast Communications, Inc.; Arch Michigan, Inc.; Arch Connecticut Valley, Inc.; and Hudson Valley Mobile Telephone, Inc.

<sup>2/</sup> FCC 93-454, released October 8, 1993.

## **I. The Interest of Arch**

1. Arch, through its affiliated companies, provides common carrier paging, private carrier paging ("PCP"), common carrier mobile and Specialized Mobile Radio ("SMR") services to the public.<sup>3/</sup> Arch is a publicly held company and enjoys a status as one of the fastest growing providers of mobile radio services in the country.<sup>4/</sup> The range of the Arch operations includes local systems, regional systems, and more recently, nationwide systems.<sup>5/</sup>

2. Arch has taken a serious interest in the development of PCS, and has been an active participant in the Commission's PCS proceeding.<sup>6/</sup> Also, Arch has regularly monitored the legislative activities affecting commercial mobile services and, thus, has a longstanding familiarity with the battle for "regulatory parity" that was waged on Capitol Hill.

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<sup>3/</sup> Arch's operations encompass thirteen states, including Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Michigan, North Carolina, South Carolina, Florida, and Louisiana.

<sup>4/</sup> Arch currently serves in excess of 255,000 paging units.

<sup>5/</sup> Arch has responded to the growing number of its customers desiring wide-area and nationwide service by developing a national paging system utilizing private carrier channels, which may be combined into a nationwide system through the use of frequency scanning pagers. Currently, Arch has applications granted or pending for authority to construct PCP base station facilities at approximately 1,300 sites nationwide.

<sup>6/</sup> See Comments of Arch Communications Group, Inc., in Gen. Docket No. 90-314 and ET Docket No. 92-100, Amendment of the Commission's Rules to Establish New Personal Communications Service, filed November 9, 1992.

Based upon this background, Arch has an informed frame of reference from which to comment in this proceeding.

**II. The Prompt Classification of All Mobile Services as Either Commercial or Private Is Necessary**

3. The Commission proposes to combine the PCS and non-PCS portions of the regulatory treatment docket and resolve them in a single consolidated order within the 180-day timeframe mandated by the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act") for PCS-related decisions.<sup>7/</sup> Arch strongly supports this decision and urges the Commission not to defer resolution of the regulatory status of any of the existing mobile services in which Arch is operating.

4. In some respects, the open issues regarding the regulatory treatment to be accorded various mobile services have served to delay important pending rulemaking actions. For example, Arch understands that the proposed comprehensive revision of Part 22 of the rules governing the Public Mobile Services<sup>8/</sup>, and the proposed creation of a new Part 88 to govern certain of the Private Radio Services<sup>9/</sup>, have been put temporarily on hold while the regulatory treatment to be accorded

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<sup>7/</sup> Notice, para. 6.

<sup>8/</sup> Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, 7 FCC Rcd 3658 (1992).

<sup>9/</sup> Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, 7 FCC Rcd 8105 (1992).

these services is determined. Many of the rule changes proposed in these now delayed dockets were intended to relieve unnecessary regulatory burdens on carriers. It is important, therefore, that the regulatory treatment issues be sorted out for all existing services as soon as possible so that the Commission can turn its attention once again to streamlining and updating the governing regulations.

**III. Service Definitions Should Be Designed  
to Avoid Artificial Distinctions and  
Classifications that Will Change Over Time**

5. In Arch's view, the drive in Congress for "regulatory parity" gained momentum because the Commission and the Courts had come to differentiate private and common carrier services based upon hypertechnical distinctions that had no apparent relevance to the manner in which competing services were perceived in the marketplace. Arch urges the Commission not to go down that path again. The Commission should eschew definitions based upon subtle technical differences in system configurations and service offerings that are likely to change over time as technology and network architectures advance.

6. Arch's answers to several of the questions posed by the Commission in the Notice derive from the foregoing premise:

a. The "for-profit" test should be based upon whether the service as a whole is offered on a commercial basis, not on whether the interconnected portion of the service is being

offered on a non-profit basis.<sup>10/</sup> Subdividing the interconnected and non-interconnected portions of the charges could lead to artificial billing arrangements driven by regulatory classification and not by market considerations.<sup>11/</sup>

b. The definition of whether services are "effectively available to a substantial portion of the public" should not be based upon self-imposed limitations of the licensee.<sup>12/</sup> It is difficult if not impossible to confirm whether a licensee is only marketing to an extremely limited class of customers.<sup>13/</sup> And, such self-imposed restrictions may well change over time based upon evolving market demands. The better approach is for the Commission to consider all for-hire services to be available to a substantial segment of the public so long as there are no restrictions in the rules preventing them from being offered to the public at large.

c. Capacity should not be a factor in deciding whether services are available to a substantial portion of the public, because capacity is constantly increasing as technology

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<sup>10/</sup> See Notice, para. 12.

<sup>11/</sup> Arch has never understood the alleged distinction between Nextel's ESMR service offering and cellular service offerings, though the former has been defined as not involving the resale of telephone interconnection services.

<sup>12/</sup> See Notice, para. 24.

<sup>13/</sup> For example, it is widely known that PCP operators were marketing units to individual users even before the restriction on individual use was lifted. Nevertheless, it was difficult to police this practice.



improves.<sup>14/</sup> What happens when the state of the art increases the capacity of a single mobile channel tenfold from 70 to 700 units? Or when a carrier converts a mobile channel serving forty customers to a paging or digital mobile data use serving tens or hundreds of thousands of customers? Regulatory definitions should not be based upon temporal conditions.

d. In interpreting the "functional equivalent" test, the Commission should strive to adopt a regulatory scheme that results in competing services being accorded similar treatment as suggested in paragraph 31 of the Notice, and not adopt a narrow construction of the statutory language that permits the Commission to continue to justify disparate treatment. Maintaining disparities between competing services will likely lead once again to Congressional intervention, and further potentially disruptive re-regulation.

e. The regulatory treatment of "mixed use" frequencies should not be based upon the primary use of the frequency.<sup>15/</sup> It is extremely difficult to distinguish primary from secondary use in many situations.<sup>16/</sup> And, again, the mix of

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<sup>14/</sup> See Notice, para. 26.

<sup>15/</sup> See Notice, para. 40.

<sup>16/</sup> For example, substantial litigation was engendered by prior Part 22 rule section 22.501(c), which permitted radio common carriers to provide "secondary" paging services on channels allocated for two-way use. A carrier could be serving 35 mobiles and 35,000 pagers on a single channel and still be devoting more than 50% of the air time to two-way service. Which service is primary? Or a carrier could serve tens of thousands of pagers and only a handful of transient mobiles, (continued...)

uses will differ over time. Regulatory distinctions should not be based upon conditions of this nature. Rather, licensees of dual use frequencies should be required to declare all uses which give rise to differing regulatory classifications and be able to provide multiple services on a co-primary basis.<sup>17/</sup>

**IV. Paging Services Should be Considered Interconnected Whether or Not Store-and-Forward Technologies Are Utilized**

7. Common carrier paging companies have fought long and hard for rights to reasonable interconnection arrangements with the public switched telephone network (the "PSTN").<sup>18/</sup> Paging companies also have strived and achieved "co-carrier" status.<sup>19/</sup> It would be completely anomalous for the Commission to define paging companies as "non-interconnected" private carriers in view of this history. Arch is concerned that such a definition could have implications not fully appreciated at this time that would inure to the detriment of the public.

8. Most of all, Arch is certain that defining paging companies that utilize store-and-forward technology as non-interconnected private service providers will lead to confusion.

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<sup>16/</sup> (...continued)

but would accord the mobiles service priority on the system. Which service is primary?

<sup>17/</sup> PCS should be handled in this flexible manner as suggested at paragraph 47 of the Notice.

<sup>18/</sup> Interconnection Order, 2 FCC Rcd at 2913.

<sup>19/</sup> See, e.g., Radio Common Carrier Interconnection, 2 FCC Rcd 2910 (1987).

The availability of 12.5 kHz talk-back narrowband PCS channels to paging companies will cause the distinctions between one-way and two-way services to become blurred. The types of service that are offered, and the extent to which they provide real time interconnection, will evolve.

9. On balance, Arch concludes that store-and-forward paging should be defined as interconnected service utilizing the reasoning of the Intelsat decision as suggested in paragraph 21 of the Notice.<sup>20/</sup>

**V. A Broad Range of Existing Services Are  
Best Defined as Commercial Mobile Services**

10. Based on the foregoing, Arch concludes that many existing mobile services must be defined as "commercial mobile service" under the applicable standards. Of the existing private services, all PCP and SMR services should be deemed commercial. On the common carrier side, existing traditional mobile telephone, cellular telephone and radio paging services all

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<sup>20/</sup> The classification of paging services as interconnected does not mean that such carriers must provide other commercial mobile service operators with open access to their systems. These are not bottleneck facilities. It would be unfair to require a paging company that has incurred the expense of building out a wide-area system to accord access in the outlying areas to a competitor who chose only to build in the major cities. The same is true in the case of PCS. Thus, Arch strenuously opposes the suggestion in paragraph 71 of the Notice that the Commission might order commercial mobile service providers to provide interconnection to other mobile service providers.

should be included as commercial mobile services.<sup>21/</sup> Generally, PCS services will be considered commercial. In addition, the general and commercial air-ground services provided under Part 22 of the rules, the mobile satellite service regulated under Part 25, and the commercial mobile marine and aviation services provided under Parts 80 and 87, would qualify.

11. Thus, the Commission has properly noted that the newly defined commercial mobile services will encompass a broad array of services that formerly fell into three distinct categories: (a) common carrier mobile; (b) certain PCS services; and (c) certain private mobile services.<sup>22/</sup> The Commission also seeks comment on whether its regulation should vary by category or within each category.

12. In Arch's view, the Commission should abandon as quickly as possible any vestiges of regulation that harken back to historical classifications of spectrum. The truth is that paging services provided under Part 22 of the rules and those provided by PCPs under Part 90 are full-blown competitors, and should be subject to common regulatory treatment. Similarly, cellular services and emerging ESMR services are competitive and historical differences should not be controlling in determining future regulatory policies.

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<sup>21/</sup> Once the historical distinctions between private and common carrier mobile service are eliminated, it makes sense to eliminate the prohibition against the provision of dispatch service by common carriers as suggested at paragraph 42 of the Notice.

<sup>22/</sup> Notice, para. 55.

13. It is, of course, a daunting task to reconcile regulatory differences that have evolved over decades. The best approach, in Arch's view, is to subdivide the undertaking into more manageable pieces. One basis of subdivision that makes perfect sense to Arch is for the Commission to divide all commercial mobile services into two classes: narrowband services and broadband services. The former would include paging, traditional mobile telephone and narrowband PCS. The latter would include cellular, ESMR and wideband PCS.

14. Regulating services based upon the amount of available bandwidth avoids many of the pitfalls discussed elsewhere in these comments. Because spectrum is a scarce resource, the amount of bandwidth assigned to a particular carrier in a particular area is likely to remain relatively constant over time. Also, there is reason to believe that carriers with similar amounts of spectrum will find themselves competing in the marketplace, since services tend to develop based upon the number of bits per hertz of information that can be delivered to customers. In short, regulatory parity is most likely to be achieved if all narrowband services on the one hand and all broadband services on the other are subject to common regulatory treatment.

**VI. Commercial Mobile Services Should Be  
Subject to a Minimum of Title II Regulation**

15. The Notice asks for comment on the extent to which the Commission should exercise the authority accorded in the

Budget Act to forbear from subjecting commercial mobile service providers to certain Title II regulations. The answer, in Arch's view, is clear: the commercial mobile services are highly competitive and should be subjected to a minimum of regulation.

16. Arch previously participated in the Commission proceeding in which the streamlining of tariff regulations for non-dominant carriers was considered.<sup>23/</sup> At the time, Arch urged the Commission to completely detariff paging and mobile telephone services. The only barrier to that relief was the recent court decision in which the Commission's permissive detariffing approach was deemed inconsistent with Section 332 of the Communications Act.<sup>24/</sup> Now, the new legislation removes this barrier and the Commission is able to remove federal tariff requirements for commercial mobile service providers. The tests set forth in the statute clearly are met, and the Commission should proceed promptly to forbear from regulation as proposed in the Notice.<sup>25/</sup>

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<sup>23/</sup> See Comments of Arch Communications Group, Inc., in FCC Docket No. 93-36, Tariff Filing Requirements for Nondominant Carriers, 8 FCC Rcd 1395 (1993).

<sup>24/</sup> AT&T Co. v. FCC, 978 F.2d 727 (D.C. Cir. 1992).

<sup>25/</sup> See discussion at Notice, paras. 56 to 68.

**VII. Conclusion**

The foregoing premises having been duly considered, Arch respectfully requests that the Commission adopt regulatory classifications and service definitions with due consideration to Arch's comments herein.

Respectfully submitted,

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November 8, 1993

CERTIFICATE OF SERVICE

I, Tana Christine Maples, hereby certify that I have this 8th day of November, 1993, caused copies of the foregoing **Comments of Arch Communications Group, Inc.** to be delivered by hand, courier charges prepaid, to the following:

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